

Title 86 Part 100 Section 100.5250 Liability for Combined Tax, Penalty and Interest
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TITLE 86: REVENUE

**PART 100
INCOME TAX**

Section 100.5250 Liability for Combined Tax, Penalty and Interest

- a) Joint and several liability of members of a combined group. The members of a combined group shall be jointly and severally liable for the combined tax, penalty and interest computed in accordance with this Subpart P, as well as the Uniform Penalty and Interest Act and rules adopted pursuant to the UPIA at 86 Ill. Adm. Code 700.
- b) Effect of intercompany agreements. No agreement entered into by one or more members of a combined group with any other member of such group or with any other person shall in any case have the effect of reducing the liability prescribed under this Section.
- c) Penalties. If a penalty is imposed under the IITA and the UPIA with respect to a combined return year, the amount shall be based on the combined tax liability or deficiency for the common taxable year.
 - 1) For purposes of applying the penalties for failure to file a return imposed by Section 3-3(a), Section 3-3(a-5) and [Section 3-3\(a-10\)](#) of the Uniform Penalty and Interest Act (UPIA) [35 ILCS 735/3-3]:

A) A corporation which erroneously fails to join in the filing of a combined return, but which timely files a separate Illinois income tax return or joins in the timely filing of a combined return for another combined group, shall not be subject to any penalty. In determining whether such separate or combined return is timely filed, the separate taxable year of such corporation or the common taxable year of the combined group such corporation erroneously joined shall be used, rather than the common taxable year of the combined group with which such corporation should have filed.

- B) A corporation which erroneously fails to join in the filing of a combined return, and which fails, without reasonable cause, to timely file a separate Illinois income tax return or to join in the timely filing of a combined return for another combined group, shall be subject to penalty computed on the amount of tax shown (or required to be shown) due on the combined return for its proper combined group. Because it is the duty of the designated agent, acting on behalf of the combined group, to include such corporation in the combined return, the members of the combined groups shall be jointly and severally liable for the penalty.

- C) A corporation which erroneously joins in the timely filing of a combined return shall not be subject to penalty for failure to file a return.
- 2) For purposes of applying the penalty for failure to timely pay tax imposed by UPIA Section 3-3(b), [Section 3-3\(b-5\)](#) and [Section 3-3\(b-10\)](#) [35 ILCS 735/3-3]:
 - A) In a case where a corporation erroneously fails to join in the filing of a combined return for a common taxable year, neither that corporation nor the combined group shall be subject to any failure-to-pay penalty under UPIA Section 3-3(b)(1), [Section 3-3\(b-5\)\(1\)](#) or [Section 3-3\(b-10\)\(1\)](#) if timely payment is made of the tax shown on a separate return filed by such corporation or on a combined return in which it erroneously joins in filing for each taxable year ending with or within such common taxable year. Unless there is reasonable cause for the failure of such corporation to join in the filing of the combined return, such corporation and the combined group may be jointly and severally liable for a penalty under UPIA Section 3-3(b)(2), [Section 3-3\(b-5\)\(2\)](#) or [Section 3-3\(b-10\)\(2\)](#) for failure to pay any additional amount which would have been shown on the combined return had such corporation been included.
 - B) A corporation which erroneously fails to join in the filing of a combined return for a common taxable year and also fails to timely pay the tax shown on a separate return it files or on a combined return in which it joins in filing for each taxable year ending with or within such common taxable year shall be subject to penalty under UPIA Section 3-3(b)(1), [Section 3-3\(b-5\)\(1\)](#) or [Section 3-3\(b-10\)\(1\)](#) only for failure to pay the tax shown on the return it actually files or joins in filing. Unless there is reasonable cause for the failure of such corporation to join in the filing of the combined return, such corporation and the combined group may be jointly and severally liable for a penalty under UPIA Section 3-3(b)(2), [Section 3-3\(b-5\)\(2\)](#) or [Section 3-3\(b-10\)\(2\)](#) for failure to pay any additional amount which would have been shown on the combined return had such corporation been included.
 - C) If a corporation erroneously joins in the filing of a combined return, neither such corporation nor the combined group shall be subject to penalty under UPIA Section 3-3(b)(2), [Section 3-3\(b-5\)\(2\)](#) or [Section 3-3\(b-10\)\(2\)](#) for failure to pay any tax required to be shown on a separate company return and the combined group shall not be subject to penalty under UPIA Section 3-3(b)(2), [Section 3-3\(b-5\)\(2\)](#) or [Section 3-3\(b-10\)\(2\)](#) for failure to pay any increase in tax resulting from the exclusion of such corporation from the combined group if the tax timely paid with the original combined return exceeds the total tax required to be shown on the correct returns.
- 3) For purposes of applying the negligence penalty imposed by UPIA Section 3-5 [35 ILCS 735/3-5] or the fraud penalty imposed by UPIA Section 3-6 [35 ILCS 735/3-6] in any case in which a corporation erroneously joins or fails to join in the filing of a combined return, the penalty may be imposed on any deficiency

resulting from such error, without taking into account any overpayment which may have resulted from the error.

Example. Corporations A, B and C meet all the requirements of a unitary business group, except that Corporations A and B are financial organizations which cannot be included in the same unitary business group as Corporation C, a manufacturer. On a separate-return basis, Corporation A has an Illinois net loss of \$500, Corporation B has Illinois net income of \$300 and Corporation C has Illinois net income of \$700. Corporations A and C file a combined return reporting combined Illinois net income of \$200, while Corporation B files a separate return reporting Illinois net income of \$300. On audit, the Department corrects the liabilities by combining Corporations A and B, which eliminates Corporation B's separate return income and entitles them to a refund of the taxes paid by Corporation B, and by determining a separate return deficiency for Corporation C. If the combination of Corporations B and C on the original return was due to negligence or an intent to defraud, Corporation C will be subject to the applicable penalty on its entire deficiency without regard to the overpayment made by Corporation B.

- 4) For purposes of applying the penalty for failure to pay estimated taxes under IITA Section 804, see Section 100.5230 of this Part.
- d) Interest. If interest is imposed under the IITA, at the rate determined under the UPIA, with respect to a combined return year, the amount shall be based on the combined tax liability or deficiency for the common taxable year. For purposes of computing any combined overpayment or underpayment on which interest is imposed:
- 1) in a case in which one or more corporations erroneously failed to join in the filing of the combined return, all payments, credits and other amounts collected from such corporations which are properly attributable to the common taxable year shall be treated as having been paid by the combined group for such common taxable year; and
 - 2) in a case where one or more corporations are erroneously included in a combined return, the designated agent may allocate to each such corporation some or all of the payments, credits and other amounts collected from the combined group which are properly attributable to the common taxable year, and all overpayments and underpayments for such corporations and the combined group will be computed in accordance with such allocation. The amount of estimated tax payments allocated to each such corporation pursuant to this subsection (d)(2) must be consistent with the amounts allocated to such corporation under Section 100.5230(a) and (g) of this Part.

(Source: Amended at 25 Ill. Reg. 4929, effective March 23, 2001)